

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 488 OF 2019
IN
CRIMINAL APPEAL NO. 501 OF 2019

Vinayak Baburao Lokare.

..Applicant.

V/s.

The State of Maharashtra & anr.

..Respondent.

Mr. Paras Yadav I/b. Nalavade and Chavan Law Associates, advocate for applicant.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 5, 2019.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 389 of the Code of Criminal Procedure, 1908 seeking suspension of sentence. The applicant herein is convicted for the offence punishable under section 8 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 10,000/- I.d. to suffer S.I. for 6 months by the Special Judge, Kolahpur in Special Case No. 22 of 2017 vide Judgment and Order dated 8/3/2019.

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3 It is the case of the prosecution that on the day of the Dasara festival the victims P.W. 2 and P.W. 3 had been to the house of the applicant to seek blessings. P.W. 2 happens to be the cousin of P.W. 3. P.W. 2 had seen that the applicant made the P.W. 3 to seat on his lap and touching her inappropriately. When she tried to intervene, she was also abused. It is alleged that thereafter, their paternal uncle and aunt had called upon them and on that day they had not disclosed the incident to any elderly member in the family. The learned Counsel for the applicant submits that on the next day, without any reason or rhyme, the aunt of the victim had probed into the victim and had asked them what had happened on the previous day and at that time, they had disclosed about the said incident. The learned Counsel further submits that it is not mentioned in the statement under section 164 of the Code of Criminal Procedure, 1973 since the victims were frightened on that day, they had not disclosed the incident to anybody. P.W. 3 has further admitted that she has stated in the statement under section 164 of the Code of Criminal Procedure, 1973 that after 8 days of the incident she had been to the police station. She has also admitted that there are more than 2 to 3 small children in the house of the applicant. She has also admitted that she used to play with the children of the applicant regularly. However, the incident had occurred only on Dasara festival. It is contended by the learned Counsel for the applicant that one of the

victim i.e. P.W. 2 happens to be her step-daughter and that there is dispute between the applicant and the mother of the victim over water connection.

4 Be that as it may, the sentence imposed upon the applicant is a short term sentence. This Court is hearing the appeals of the year 2013 and hence, the appeal may not be come for hearing in near future. Reliance can be placed upon the Judgment of the Apex Court in the case of Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130 for seeking suspension of substantive sentence during the pendency of the appeal which cannot be heard at the earliest thereby causing the prayer to become infructuous.

5 In view of this, the applicant deserves to be enlarged on bail during the pendency of the appeal. Hence, following order is passed:

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 8/3/2019 passed by the Special Judge, Kolhapur in Special Case No. 22 of 201 is hereby suspended. He be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- and

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one or more solvent sureties in like amount.

(iii) The applicant shall not reside within the jurisdiction of Rajarampuri Police Station till 30/8/2019.

(iv) Upon being enlarged on bail, the applicant shall furnish his contact number such as land line number cell phone numbers, his present address and his permanent address.

(v) The applicant shall attend the Special Court, Kolhapur once in 6 months on the date assigned by the Special Court, Kolhapur. Upon failure to attend any two consecutive dates, the Special Court, Kolhapur shall report to the High Court and the prosecution is at liberty to move for cancellation of bail.

6 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]